IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR
:::

ORDER

S.B. Civil Writ Petition No.228/2005-Dinesh Chandra Mathur-Vs The State of Rajasthan and others under Article 226 of the Constitution of India.

Date Of Order :: 16th October, 2006

PRESENT

Hon'ble Mr. Justice Mohammad Rafiq

Mr. Sanjay Mathur, Advocate for petitioner.
Mr. R. Dave, Dy. Government Advocate, for the respondents.

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The petitioner Dinesh Chandra Mathur has in this writ petition challenged the award dated 27/9/2004 passed by Industrial Tribunal-cum-Labour Court, Udaipur (in short the Labour Court).

Reference was made to the Labour Court by the appropriate Government vide notification dated 4/12/1998

on the question whether removal of the petitioner-workman by respondent management from service w.e.f. 1/10/1991 was legal and justified and if not, what relief the workman was entitled to.

Case set up by the petitioner-workman before the Labour Court was that he was appointed by the respondent on the post of Munshi on 1/3/1987 on the minimum pay-scale. He continued to work with them upto 30/9/1991. However the respondents did not allow him to work and discharge his duties w.e.f. 1/10/1991. According to the petitioner, the reason for refusal by the respondent to permit him to work was his demand for grant of regular pay-scale and other benefits. He has been removed from service without making compliance of sections 25F & 25H of the Industrial Disputes Act,1947 (for short the Act).

The aforesaid claim was contested by the respondent whose stand was that the petitioner was engaged on daily

wage basis and therefore was not entitled to regular pay-scale. It was further averred in the reply that the petitioner-workman abandoned the service at his own. The petitioner did not work for 240 days during the calender year immediately preceding the date of his retrenchment nor did he complete the said period of 240 days in any calender year. There was no violation of provisions of Section 25F of the Act and there was also no violation of section 25G because the petitioner left his job at his own accord and also there was no violation of section 25H because no one was engaged afresh after retrenchment of the petitioner.

Learned Labour Court after recording evidence of the parties and hearing the arguments finally answered the reference by its award dated 27/9/2004. It held that the petitioner was removed from service in violation of section 25F of the Act because neither was he given any notice nor was paid any compensation. Learned Labour Court further held that keeping in view the fact that a long period of 13

years has gone by since the retrenchment of the petitioner and that the respondent has stopped taking workers on muster roll basis since 1992, it would not be just and proper to now direct reinstatement of the petitioner. It was held that the ends of justice would be made if the respondents are directed to pay to the petitioner a lump sum amount Rs.50,000/- in lieu of reinstatement. Accordingly the respondent was directed to pay the aforesaid amount of compensation to the petitioner-workman and further directed that if the aforesaid amount is not paid within a period of one month, then the petitioner-workman shall be entitled to get the interest at the rate of 6% per annum thereon.

I have heard Sh. Sanjay Mathur, learned counsel for petitioner and Sh. R. Dave, learned Dy. Government Advocate for respondent who in their arguments have supported their respective cases as pleaded before the learned Labour Court.

Having considered the arguments of the parties, I am inclined to uphold the view taken by the learned Labour Court. In the present case, I find that learned Labour Court has basically given two reasons for directing the payment of lump sum compensation in lieu of reinstatement which are; namely (i) that the retrenchment of the workman was made on 1/10/1991 and when the award was passed on 27/9/2004 already a period of 13 years had elapsed in between and (ii) that the respondent has already stopped taking the workers on muster roll basis since 1992. I also find not only these two reasons but there was another additional reason which also justified refusal of reinstatement in that the retrenchment of the petitioner-workman was shown to be made on 1/10/1991 whereas the reference was made to the Labour Court by appropriate government vide notification dated 4/12/1998. Such an inordinate delay by itself could be an appropriate ground for moulding the relief which has by now become settled proposition of law following by catena of judgments of the

Hon'ble Supreme Court as also by this court in 1995 SCC (L&S) 142 Rolastan Rohan Vs. Central Industrial Tribunal, 1995 SCC (L&S) Gujrat State Road Transport Corporation Vs. Mulluamra, 1995 SCC (L&S) 529 Surjeet Ghosh Vs. Uco Bank, LLR 1996 (1) 644 Gorabha Corporating Marketing Vs. Presiding Officer, 1998 SCC (L&S) 170 Ratan Singh VS. Union Of India and WLC (Raj.) 1999 Dharmveer Singh Vs. State of Rajasthan 310. I my considered view, the award passed by the learned labour court does does not suffer from any error apparent on the face of record so as to warrant interference by this Court.

In the result, the writ petition fails and is hereby dismissed with no order as to costs.

(Mohammad Rafiq),J.

c.p.goyal/-